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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 MAX RUHLMAN and ERIC SAMBOLD,

13 Plaintiffs,

14 v.

15 GLENN RUDOLFSKY, individually and DBA
HOUSE OF DREAMS KAUAI and HOUSE OF
16 DREAMS HAWAII; KIM D. RUDOLFSKY,
AKA KIM DAPOLITO, individually; and DBA
17 HOUSE OF DREAMS KAUAI and HOUSE OF
DREAMS HAWAII,

18 Defendants.
19

CASE NO.: 2:14-cv-00879-RFB-NJK

DEFENDANTS' REPLY IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' COMPLAINT FOR LACK OF
PERSONAL JURISDICTION AND *FORUM*
NON CONVENIENS

20 Defendants GLENN RUDOLFSKY ("Mr. Rudolfsky") and KIM D. RUDOLFSKY
21 ("Ms. Rudolfsky") (collectively "Defendants") by and through their undersigned counsel, hereby
22 submit this Reply in Support of Defendants' Motion to Dismiss Plaintiffs' Complaint for Lack of
23 Personal Jurisdiction and *Forum Non Conveniens* (the "Reply"). Defendants base this reply on
24 the pleadings and records on file herein, the Points and Authorities set forth below and the oral
25 argument of counsel, if any.

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POINTS AND AUTHORITIES

I.

**THIS COURT LACKS JURISDICTION OVER
MS. RUDOLFSKY WHO IS AN ESSENTIAL PARTY TO THIS CASE**

To dismiss this action in whole, the Court would only have to find that it lacked personal jurisdiction over Ms. Rudolfsky. As the property to which MAX RUHLMAN ("Ruhlman") and ERIC SAMBOLD ("Sambold") (collectively "Plaintiffs") claim an interest (the "Property") is owned jointly by Mr. and Ms. Rudolfsky, Ms. Rudolfsky is a necessary and indispensable party. If the Court does not have personal jurisdiction over Ms. Rudolfsky, the Court would be required to dismiss the entire action pursuant to Fed. R. Civ. P. 19(b).

The sole basis for asserting jurisdiction over Ms. Rudolfsky made in Plaintiffs' Opposition to Defendants' Motion to Dismiss (the "Opposition") is her alleged business activities in Nevada. Plaintiffs claim that "[b]oth Rudolfsky Defendants have transacted business in Nevada by meeting with the Plaintiffs in Las Vegas and successfully soliciting \$550,000 from the Plaintiffs for their fifty percent interest in the Ke Aloha joint venture." Opposition at 6. This allegation is in sharp contrast to the rest of the Opposition which attributes all business activities that took place in Nevada to Mr. Rudolfsky alone, including "the Tortious Acts in Nevada" which are attributed solely to Mr. Rudolfsky and the allegation that only Mr. Rudolfsky "shook hand (*sic.*) on the joint venture" in Nevada. See Opposition at 7, 2. The affidavits of Mr. Rudolfsky and Ms. Rudolfsky both explain that all business discussions took place at a lunch which was not attended by Ms. Rudolfsky, the Plaintiffs have made no response to this claim either to deny it or to claim that Ms. Rudolfsky participated in business discussions at another time. See, Declaration of Glenn Rudolfsky attached to Defendants' Motion to Dismiss Plaintiffs' Complaint for Lack of Personal Jurisdiction and *Forum Non Conveniens* (the "Motion") as Exhibit "A" at ¶¶ 22-25; Declaration of Kim Rudolfsky attached to the Motion as Exhibit "B" at ¶¶ 14-16. Without giving any detail of her alleged conduct in Nevada, Plaintiffs make unsubstantiated accusations for the sole purpose of establishing jurisdiction where it does not appropriately lie.

1 Plaintiffs' only other basis for alleging that Ms. Rudolfsky has conducted business in
 2 Nevada is the shareholder reports that Ms. Rudolfsky emailed to Ruhlman which he allegedly
 3 received in Nevada. The Ninth Circuit has held that the "use of the mails, telephone or other
 4 international communications simply do not qualify as purposeful activity invoking the benefits
 5 and protection of the forum state." Peterson v. Kennedy, 771 F.2d 1244, 1262 (9th Cir. 1985).
 6 The Ninth Circuit later updated the holding of Peterson to include email. Sarkis v. Lajca, 425
 7 Fed. Appx. 557, 558-559 (9th Cir. 2011) ("While [defendant] contacted [plaintiff] in California
 8 through phone and e-mail to negotiate his contract, the 'use of the mails, telephone or other
 9 international communications simply do not qualify as purposeful activity invoking the benefits
 10 and protection of the forum state.'"). If the receipt of shareholder reports by email was sufficient
 11 to establish personal jurisdiction nearly every large company in the United States would be
 12 subject to jurisdiction in every state and territory.

13 II.

14 **MR. RUDOLFSKY'S BUSINESS ACTIVITIES IN** 15 **NEVADA ARE INSUFFICIENT TO ESTABLISH JURISDICTION**

16 A. The January 6, 2012 Meeting

17 The January 6, 2012 meeting was one of several communications, which combined,
 18 shaped the dealings between the Defendants and the Plaintiffs (collectively "the Parties"). See,
 19 Opposition at 2-4. As Sambold stated, the parties "certainly never agreed on any terms and
 20 conditions nor made any promises." See Email from Sambold to Mr. Rudolfsky dated March 19,
 21 2013, attached to the Motion as Exhibit "G". Plaintiffs attempt to minimize Sambold's telling
 22 statement by claiming that it only dealt with the financing of the agreement. See, Opposition at
 23 4. Sambold's email never makes any statement to the effect that his statement should only apply
 24 to financing, but even assuming that much is true, the clear implication of leaving financing
 25 unsettled is that a full agreement as to how the Parties were to proceed was not reached at that
 26 time. In order for specific jurisdiction to be established "the claim must arise out of the
 27 defendant's forum-related activities." Gray & Co. v. Firstenberg Machinery Co., 913 F.2d 758,
 28 760 (9th Cir. 1990). Because the January 6, 2012 meeting was only one of several

1 communications and meetings in the development of the Parties' activities and because that
2 meeting did not produce "any terms and conditions nor . . . any promises," the meeting cannot
3 accurately be construed as the source of the claim. See Email from Sambold to Mr. Rudolfsky
4 dated March 19, 2013, attached to the Motion as Exhibit "G". General jurisdiction is also
5 inapplicable as one meeting cannot possibly be considered "affiliations with the State [that] are
6 so 'continuous and systematic' as to render them essentially at home in the forum State" as is
7 necessary to establish general jurisdiction. Goodyear Dunlop Tires Operations, S.A. v. Brown,
8 131 S.Ct. 2846, 2851 (2011).

9 B. Mr. Rudolfsky's Emails

10 Plaintiffs rely on emails sent from Mr. Rudolfsky in other jurisdictions which were
11 allegedly received by Ruhlman in Nevada to establish jurisdiction. As explained above, the
12 Ninth Circuit has held that emails "simply do not qualify as purposeful activity invoking the
13 benefits and protection of the forum state." Peterson, 771 F.2d at 1262; see also, Sarkis, 425
14 Fed. Appx. at 559. The emails that Ruhlman allegedly received in Nevada do nothing to
15 establish jurisdiction over Mr. Rudolfsky.

16 C. The Nevada LLC

17 This Court has previously stated that "membership in a single LLC or being a director of
18 a single corporation may not constitute sufficient contact with Nevada" to establish jurisdiction.
19 Gala v. Britt, 2:10-cv-00079-RLH-RJJ, 2010 U.S. Dist. LEXIS 133429 (D. Nev. Dec. 15, 2010).
20 Even were it sufficient for jurisdiction, Defendants reassert that Mr. Rudolfsky never gave his
21 consent to be a member of Ke Aloha LLC. Plaintiffs provide very weak evidences to attempt to
22 prove otherwise. Plaintiffs support their argument of Mr. Rudolfsky's consent to the formation
23 of the LLC with the fact that Mr. Rudolfsky supplied his home address to Plaintiffs. See,
24 Opposition at 6. What is not mentioned is that the email where Mr. Rudolfsky provided his
25 address is dated May 23, 2012, just shy of four months before the filing of the LLC and includes
26 a request that Mr. Rudolfsky's attorney be able "to work on it." See, Appendix to the Opposition
27 at 66. Mr. Rudolfsky's attorney was never given the opportunity to review any LLC materials
28 and Mr. Rudolfsky never gave his consent to the actual formation of the LLC.

1 Plaintiffs' only other two pieces of evidence are communications from Mr. Rudolfsky
 2 where the idea of a Nevada LLC is discussed tentatively, without any actual terms set out. See,
 3 Opposition at 6; Appendix to the Opposition at 49-56. Of the two communications referenced in
 4 the Opposition, only one is dated, giving a date six months before Ke Aloha LLC was actually
 5 registered. See, Appendix to the Opposition at 56. These communications fail to demonstrate
 6 actual consent to be a member of an LLC.

7 III.

8 **MR. RUDOLFSKY'S ALLEGED TORTIOUS** 9 **ACTIONS DO NOT ESTABLISH JURISDICTION**

10 The Ninth Circuit has held that in tort cases the court should "inquire whether a
 11 defendant purposefully directs his activities at the forum state, applying an 'effects' test that
 12 focuses on the forum in which the defendant's actions were felt, whether or not the actions
 13 themselves occurred within the forum. The "effects" test . . . requires that the defendant
 14 allegedly must have (1) committed an intentional act, (2) expressly aimed at the forum state, (3)
 15 causing harm that the defendant knows is likely to be suffered in the forum state." Mavrix
 16 Photo, Inc. v. Brand Techs., Inc., 647 F.3d 1218 (9th Cir. Cal. 2011) (citations omitted). The tort
 17 that is alleged here deals with the purchase, ownership and management of a Hawaii property.
 18 All of the effects arising from this purported tort would be aimed at and suffered exclusively in
 19 Hawaii. None of the effects would be aimed at or suffered in Nevada and as such this Court
 20 cannot have jurisdiction to hear such a tort.

21 IV.

22 **MR. RUDOLFSKY'S OWNERSHIP OF** 23 **PROPERTY DOES NOT ESTABLISH JURISDICTION**

24 Plaintiffs cite a portion of the Nevada Civil Practice Manual to support the idea that the
 25 ownership of Nevada property in and of itself is sufficient to confer jurisdiction. See, Opposition
 26 at 7. Plaintiffs quote the phrase "owning or using any real property situated in Nevada" without
 27 giving the preceding qualifier of "any cause of action which arises from." Id.; 1-9 Nevada Civil
 28 Practice Manual § 9.14 (quoting former NRS 14.065). The inclusion of this omitted clause
 makes clear that in order for the ownership of property to be determinative of jurisdiction, the

1 cause of action must arise from that ownership. Because the instant case is completely unrelated
 2 to the property that Mr. Rudolfsky owns together with his mother, the property cannot convey
 3 jurisdiction in this case. The Supreme Court has explained that “although the presence of the
 4 defendant's property in a State might suggest the existence of other ties among the defendant, the
 5 State, and the litigation, the presence of the property alone would not support the State's
 6 jurisdiction.” See, Shaffer v. Heitner, 433 U.S. 186, 209 (1977).

7 The Nevada property in question (Mr. Rudolfsky’s “Mother’s Home”) was purchased by
 8 Mr. Rudolfsky’s parents in 1991. See, Declaration of Glenn Rudolfsky attached hereto as Exhibit
 9 “1” at ¶ 5. Following the death of his father in 1999, Mr. Rudolfsky was added as a joint tenant
 10 of his Mother’s Home in 2000. Id. at ¶ 6. This was done solely for estate planning purposes. Id.
 11 Mr. Rudolfsky visited his mother at his Mother’s Home when he came to Nevada for the January
 12 6, 2012 meeting. Id. at ¶ 7. That visit is the only time since his father’s funeral in 1999 that he
 13 has been to his Mother’s Home or been in Nevada. Id. at ¶ 8.

14 V.

15 **HAWAII IS A SUPERIOR ALTERNATIVE FORUM**

16 Hawaii is the common forum to all of the Parties to this action as all of the Parties own
 17 property or interests in property there. See, Declaration of Glenn Rudolfsky attached to the
 18 Motion as Exhibit “B” at ¶¶ 33-34. All Parties have already demonstrated their ability to travel
 19 to Hawaii. Id. at ¶ 35. Importantly, the following witnesses, and likely others, are Hawaii
 20 residents whose testimony will be essential for the determination of this matter;

21 Ken Attix, the realtor for the purchase of the Property;

22 Harvey Cohen, the attorney who prepared the loan documents between Sambold and Mr.
 23 Rudolfsky and sought vacation licensing for the Property;

24 The person most knowledgeable from Old Republic Title, the title company used in the
 purchase of the Property;

25 Bea Jeal, an employee of Old Republic Title that assisted in the purchase of the Property;

26 Heather Ford, a realtor who assisted the Plaintiffs in purchasing an additional Hawaii
 27 property;

28 Lisa Larkin, a realtor who worked with Ruhlman in Hawaii;

1 Kaleo Chandler, landscaper for the Property and for Sambold's separate Hawaiian
property;

2 David Bancroft, contractor for the Property;

3 Marc Andre, contractor on another Hawaii property purchased by the Plaintiffs;

4 Jeff Benson, a witness to a meeting or two in Hawaii between the Parties where relevant
5 issues were discussed; and

6 Belinda Colley, a witness to a meeting in Hawaii between the Parties where relevant
7 issues were discussed.

8 See, Exhibit 1 at ¶ 9. Additionally, Plaintiffs have not addressed the fact that this dispute will be
9 largely determined by Hawaiian law and that it will affect the use and ownership of Hawaiian
10 property creating a far greater interest in the determination of the case in Hawaii than in Nevada.
11 For all of these reasons transfer to Hawaii is proper under 28 U.S.C. § 1404(a) and the common
12 law doctrine of *forum non conveniens*.

13 CONCLUSION

14 This case cannot go forward in this District if this Court does not find that it properly has
15 jurisdiction over Ms. Rudofsky. Plaintiffs have only made vague and unfounded assertions of
16 Ms. Rudofsky's business activities in Nevada. In truth, Ms. Rudofsky has not conducted any
17 business in Nevada. There are no grounds for jurisdiction over Ms. Rudofsky. Because Ms.
18 Rudofsky is an indispensable party as the part owner of the disputed Property, the case must be
dismissed in its entirety due to the Court's lack of jurisdiction over her.

19 The Court also lacks jurisdiction over Mr. Rudofsky. Mr. Rudofsky's alleged business
20 activities are insufficient to create jurisdiction, the effects of his alleged tortious conduct would
21 be felt entirely outside of this jurisdiction and his joint ownership of his mother's home cannot
22 establish jurisdiction in an unrelated case. As such, this Court has no grounds to assert
23 jurisdiction over him. In the alternative, Hawaii is a far superior forum to hear this case and

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1 transfer is proper under 28 U.S.C. § 1404(a) and the common law doctrine of *forum non*
2 *conveniens*.

3 DATED this 8th day of September, 2014.

4 **HOLLEY, DRIGGS, WALCH,**
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6 

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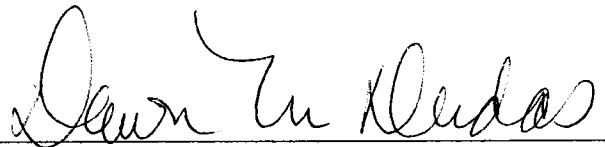
14 Las Vegas, Nevada 89101

15 *Attorneys for Defendants*

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I certify that on the 8th day of September, 2014, I caused the document entitled DEFENDANTS' REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT FOR LACK OF PERSONAL JURISDICTION AND *FORUM NON CONVENIENS*, to be served by electronically transmitting the document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following registrants:

Elizabeth J. Foley, Esq. – Efoleylawyer@gmail.com


AN EMPLOYEE OF HOLLEY, DRIGGS, WALCH,
PUZEY & THOMPSON